IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2106 OF 2004

M/s.M. Kantilal Exports & Anr. .. Petitioners.
V/s.
Union of India & Another .. Respondents.

Mr.B.V. Jhaveri for the petitioner.
Mr.A.S. Rao for the respondents.

CORAM : V.C. DAGA &
J.P. DEVADHAR, JJ.

DATED : 26TH APRIL, 2005.

P.C. :

1. Heard. Rule, returnable forthwith. The advocate for the revenue waives service for the respondents. Rule is treated on board for final hearing at this stage.

2. Having considered the available material and all the aspects, we are of the view that the application made by the petitioner seeking extension under Section 80HHC(2)(a) of the Income Tax Act for realisation of outstanding export proceeds requires reconsideration. It appears from the impugned order that the delay in receiving the export proceeds is only one to two months. Although no specific reason for the delay is given by the assessee, the fact that the assessee had applied for extension and the fact that the entire export proceeds have been received within a period of two months cannot be ignored. The Commissioner seems to have overstretched the matter

by observing that the assessee ought to have established with evidence that he was unable to bring the convertible foreign exchange for the reasons beyond control. The matter requires reconsideration by the Commissioner of Income Tax.

3. We, accordingly, set aside the order dated March 11, 2004 impugned in the present writ petition and direct the Commissioner of Income Tax to reconsider the petitioner's application dated September 30, 1998 seeking extension under Section 80HHC(2)(a) in accordance with law.

4. As regards the challenge to the notice under Section 148 of the Income Tax Act, liberty to the petitioner to apply to the concerned Assessing Officer for appropriate order in the light of this order.

5. Rule is made absolute in the aforesaid terms.

6. No costs.

(V.C. DAGA, J.)

(J.P. DEVADHAR, J.)